

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: LTDS CORPORATION, Complainant, vs. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-03-51
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PROTECTIVE ORDER AND ORDER REGARDING FUTURE MOTIONS

(Issued December 16, 2003)

On December 1, 2003, LTDS Corporation (LTDS) filed a motion for a protective order regarding data request No. 1 that had been served on LTDS by Qwest Corporation (Qwest) on November 21, 2003. Data request No. 1 asks for the seven quarterly reports LTDS filed with the Utilities Board (Board) in Docket No. TCU-01-13. LTDS states it objects to providing the information in the reports because it is competitively sensitive information, and providing the information to Qwest would place LTDS at a competitive disadvantage in the market place. LTDS further argues that any concerns regarding LTDS' status as a certificated Competitive Local Exchange Carrier (CLEC) are best addressed by the Board in Docket No. TCU-01-13, that the Board has not amended or rescinded LTDS' certificate of public convenience and necessity to provide voice telecommunications

service, and that as long as LTDS holds its certificate, it is inappropriate for Qwest to question that status. LTDS further argues that the issue in this case is Qwest's willingness, or lack thereof, to provide the service requested by LTDS, and the information in the quarterly reports is not relevant to the issues in this case. LTDS further alleges that the real purpose of the data request is not to discover material evidence, but to gain improper competitive information related to LTDS' customers and services. LTDS argues that it is the only CLEC in Iowa that must file the quarterly reports, and it should not have to turn over the information simply because it has been filed with the Board. Furthermore, LTDS argues that the information is the most sensitive a CLEC has, and to force its production would cause irreparable harm and create an undue burden upon LTDS. LTDS requests a protective order prohibiting discovery, or in the alternative, an order upon such terms and conditions as are just, giving due regard to the protection requested by LTDS.

Qwest filed a response to the motion for a protective order on December 15, 2003. Qwest argues that it is entitled to the information sought because it relates to Qwest's defense in this proceeding, that LTDS is not entitled to the unbundled dedicated transport network element that it requested. Furthermore, Qwest states that, had it been asked, it would have told LTDS that it is willing to enter into a reasonable protective agreement to limit disclosure of the information to limited individuals involved in the defense of the complaint. Qwest identifies these individuals as lawyers and witnesses involved in this proceeding who do not have responsibilities for marketing or sales activities. Qwest argues that it is entitled to the

quarterly reports, which should provide evidence concerning LTDS' progress (or lack thereof) in entering the local exchange market, for two reasons. First, Qwest argues, the reports will be relevant to whether the facility LTDS requests will be used to provide a "qualifying service." Second, Qwest further argues, the reports are directly relevant as to whether LTDS is providing or plans to provide telecommunications services and thus is eligible to purchase unbundled network elements pursuant to the interconnection agreement. Qwest further argues that the extent and location of LTDS' local exchange service customers is relevant to the issue as to whether LTDS will use the facility ordered to provide qualifying telecommunications services as required. Qwest further argues that even if the information were not admissible, discovery would be appropriate because the report information would contain information that would appear reasonably calculated to lead to the discovery of admissible evidence pursuant to Iowa Rule of Civil Procedure 1.503(1). Qwest states it is requesting discovery to show that, if LTDS has failed to adequately market basic local exchange service in the past, this is strong evidence of whether and to the degree to which LTDS intends to use the specific unbundled dedicated transport (UDIT) for qualifying telecommunications services. Therefore, Qwest argues, this is a proper area for discovery. Qwest therefore requests that LTDS' request for a protective order be denied insofar as the request extends beyond the scope of entry of an appropriate protective order limiting disclosure of the discovery sought to

lawyers and witnesses involved in this proceeding who do not have responsibilities for marketing or sales activities.¹

Parties in contested case proceedings before the Board routinely share competitively sensitive information under protective agreements. The information sought in the disputed data request could be relevant to Qwest's defense of the complaint, at least as the defense is set forth in the documents filed to date in this proceeding. LTDS' arguments to the contrary are not persuasive. Due process requires that Qwest be allowed to pursue discovery of relevant information. However, LTDS is correct that the information sought is particularly sensitive in the competitive relationship between the parties.

In its response, Qwest states that it is willing to enter into a reasonable protective agreement to limit disclosure of the information sought to the lawyers and witnesses involved in this proceeding who do not have responsibilities for marketing or sales activities. This is a reasonable restriction.

Based strictly upon the circumstances existing as of the date of this order, LTDS' motion for a protective order is granted with the following limitations. LTDS must provide the quarterly reports requested in data request No. 1 to Qwest's lawyers and witnesses involved in this proceeding who do not have responsibilities for marketing or sales activities. Qwest's lawyers and witnesses will hold the information confidential, and will not share the information with other Qwest

¹ Qwest's response includes a footnote 18. Footnote 18 is "Need Cite." Qwest must file the appropriate citation as soon as possible.

personnel. If any portion of the hearing will relate to the confidential information, upon motion of a party, that portion of the hearing will be conducted in closed session. Upon motion of a party, the portion of the transcript and any briefs related to the information will not be available to the public. Parties must comply with the requirements of 199 IAC 1.9 when filing information claimed to be confidential.

Since this case is on an expedited schedule, LTDS must deliver the required information to Qwest's counsel on or before December 17, 2003. Counsel for the parties will be informally advised of the substance of this order by electronic mail upon issuance of this order.

Due to the expedited schedule of this case, the upcoming holidays, and the anticipated vacation of the undersigned administrative law judge, special arrangements must be made. If any motions are filed, the opposing party will have five days to respond to the motion. If any party files any document with the Board other than those ordered in the procedural schedule and notice of hearing issued December 1, 2003, the party is directed to send an electronic message (email) to jean.mathis@iub.state.ia.us to notify her of the filing on or before the date the document is filed. If any party requires the attention of the undersigned administrative law judge between December 23, 2003, and January 1, 2004, the party is directed to email Ms. Mathis to notify her of this requirement.

IT IS THEREFORE ORDERED:

1. The motion for protective order filed by LTDS on December 1, 2003, is granted with the limitations discussed in the body of this order.

2. LTDS must deliver the information requested in data request No. 1 to the office of Qwest's attorneys on or before December 17, 2003.

3. If any motions are filed, the opposing party will have five days to respond to the motion.

4. If any party files any document with the Board other than those ordered in the procedural schedule and notice of hearing issued December 1, 2003, the party is directed to email Ms. Mathis to notify her of the filing on or before the date the document is filed.

5. If any party requires the attention of the undersigned administrative law judge between December 23, 2003, and January 1, 2004, the party is directed to email Ms. Mathis to notify her of this requirement.

6. A copy of this order will be mailed to LTDS and Qwest and hand delivered to the Consumer Advocate. In addition, the undersigned will informally advise counsel for the parties of the substance of this order by electronic mail upon issuance of this order.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 16th day of December, 2003.